In the Supreme Court of the United States

OCTOBER TERM, 1941

JOHN C. GETZ, R. P. LYMAN, Jr. and DANIEL W. GOODENOUGH,

Petitioners,

vs.

TOWN OF BELLEAIR, a Municipal Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO: THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

May it please the Court: The Petitioners, John C. Getz, R. P. Lyman, Jr. and Daniel W. Goodenough, respectfully show to this Honorable Court:

Petitioners are residents of the State of Michigan. Defendant is a municipal corporation organized by Chapter 10335, Laws of Florida, 1925. It is the successor of the Town of Belleair Heights which was incorporated by Chapter 9686, Laws of Florida, 1923, and is liable for the debts of its predecessor. The amount in controversy exceeds $3,000. exclusive of interest and costs.

STATEMENT OF THE CASE

This suit is for a judgment upon past due coupons representing interest accrued on "Public Improvement Bonds" issued by the former Town of Belleair Heights. The bonds were dated as of July 1, 1924, mature July 1, 1954, and are described in Paragraph 3 (page 2). The coupons are described in Paragraph 5 (a), (page 4), (Exhibit 2, p. 9). (Other bonds and coupons originally sued on have been disposed of and are not now involved in this suit). Each bond (Exhibit 1, p. 7) recites that it was issued

> "for the purpose of providing funds for the construction of wharves, ship channels, parks, drives and boulevards in the Town of Belleair Heights, Florida, and is issued in pursuance of the affirmative vote of a majority of the electors of said Town qualified to vote on the question, voting at an election duly called and legally held for that purpose, and pursuant to ordinances and resolutions of said Town duly passed, ordained, approved and adopted as required by law and in pursuance to and in full compliance with all the require-

ments of the Constitution and laws of the State of Florida, including the provisions of its Charter, said Charter being Chapter 9686 of the Acts of the Legislature of Florida for the year 1923."

On each bond there was endorsed the following certificate of the Clerk of the Circuit Court of the Sixth Judicial Circuit of Pinellas County, Florida:

> "Validated and confirmed by decree of the Circuit Court of the Sixth Judicial Circuit of the State of Florida, in and for Pinellas County; dated the 28*th day of July, A. D.* 1924."

That certificate was authorized by Section 2, Chapter 6868, Laws of Florida, 1915, Section 5126, C. G. L. 1927, (See Appendix A). By Section 4 of that chapter such a decree is

> "forever conclusive as to the validity of the bonds against the City and its taxpayers, and that the validity of the bonds shall never be called in question in any court of this State."

Defendant answered the Complaint (pp. 29-46). On August 5, 1936, the Supreme Court of Florida decided the case of *Olds v. Alvord*, 191 So. 424. Plaintiffs amended their Complaint (See Amendment pp. 51-53), reciting that decision holding the bonds void, Petitioners' ownership of seventy-five bonds, and, as an alternative claim for relief, sought recovery of money had and received by the Town from the sale of the bonds.

Defendant answered the amended Complaint (pp. 53-55). On September 7, 1940, the District Court (p. 154)

held that the bonds were void and recovery could not be had upon the coupons because of the decision of the Florida Court in *Olds v. Alvord,* supra; but that the amended Complaint set forth a case for relief for money had and received. Defendant then filed an "Additional Defense" (pp. 55 et seq.) alleging that the judgment of the State Court in *Olds v. Alvord,* supra, was res judicata of the right of Plaintiffs to recover for money had and received, because that suit was an action against bondholders as a class. Defendant moved for summary judgment; the motion was granted (pp. 146-8) and the Complaint was dismissed without day.

Petitioners appealed to the Circuit Court of Appeals. That court held that it was not necessary for it to determine (*and it did not determine*) whether *Olds v. Alvord* was a class suit and binding on Petitioners; because it said that the decision of the State Supreme Court that bonds of the Town dated July 1, 1924, were void because the Town had no power to issue them, and that the decree of the Circuit Court, July 28, 1924, validating the bonds did not cure such want of power, was conclusive, and the Federal Court was bound by that decision.

It reversed the summary judgment entered by the District Court;- holding that the right of Petitioners to recover for money had and received had not been adjudged by the State Court; it remanded the case for a trial of that issue under the laws of Florida.

Since the bonds do not mature until 1954, Petitioners cannot have a right to sue for money had and received on the bonds unless the bonds are void. The validity of the

bonds, as such, must first be determined. If the bonds are valid, there can be no recovery upon a common count. Only if the bonds are void can there be a recovery of the principal.

If the District Court should enter judgment against the right of Petitioners to recover on quantum meruit, Petitioners could not, on a second appeal, contend the bonds are valid, since they would be concluded by the recent decision of the Circuit Court of Appeals. Petitioners' only remedy, therefore, for the correction of the error of the lower courts is by this petition at this time.

Application is hereby made to this Court for a Writ of Certiorari to review the decree of the Fifth Circuit Court of Appeals dated June 2, 1941, on the following grounds:

I.

The Fifth Circuit Court of Appeals has decided an important question of Federal law in direct conflict with a long line of applicable decisions of this Court beginning with *Rowan v. Runnells*, 5 How. 134, 12 L. ed. 85. The principle announced in that case, though stated differently, was applied in *Gelpcke v. Dubuque*, 1 Wall. 175, 17 L. ed. 520, in *Douglas v. Pike County*, 101 U. S. 677, 25 L. ed. 968, and in numerous other cases: It is that

> "after a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is,

to all intents and purposes, the same in its effect on contracts as an amendment of the law by means of a legislative enactment."

(That is to say, a change of decision is given a prospective operation, but not a retroactive one).

Ohio v. DeBolt, 16 How. 416, 14 L. ed. 997
Anderson v. Santa Anna Twp., 116 U. S. 356, 29 L. ed. 633
Havemeyer v. Iowa, 3 Wall. 294, 18 L. ed. 38
Lee Co. v. Rogers, 7 Wall. 181, 19 L. ed. 161
Kenosha v. Lamson, 9 Wall. 477, 19 L. ed. 725
Olcott v. Fond du Lac Co., 16 Wall. 678, 21 L. ed. 382
Block v. Bourbon Co., 99 U. S. 686, 25 L. ed. 491
Taylor v. Ypsilanti, 105 U. S. 60, 26 L. ed. 1008
Ralls Co. v. Douglas, 105 U. S. 728, 26 L. ed. 957
New Buffalo Twp. v. Cambria Iron Co., 105 U. S. 73, 26 L. ed. 1024
Mitchell v. Burlington, 4 Wall. 270, 18 L. ed. 350
Green Co. v. Conness, 109 U. S., 104, 27 L. ed. 872
Louisiana v. Pillsbury, 105 U. S. 278, 26 L. ed. 1090
Knox Co. v. Ninth Nat. Bank, 147 U. S. 91, 37 L. ed. 93
Wade v. Travis Co., 174 U. S. 499, 43 L. ed. 1060
Loeb v. Columbia Twp., 179 U. S. 472, 45 L. ed. 280
U. S. ex rel v. Butz vs. Muscatine, 8 Wall. 575, 19 L. ed. 470

The Court of Appeals in its opinion did not refer to this principle, nor to any of these cases, although the point was urged in Petitioners' brief, filed in the Circuit Court of Appeals. The lower courts ignored the pertinent fact that

in 1924 *a State Court of general jurisdiction* (the Circuit Court) *had finally adjudicated Petitioners' bonds to be valid before the bonds were sold by the municipality.*

Thus there is here presented clearly to this Court a most important question of law: Did the decision of this Court in *Erie R. R. Co. v. Tompkins,* 304 U. S. 64, 82 L. ed. 1188, reverse the long line of decisions above referred to? The lower courts by holding that *Olds v. Alvord,* supra, was binding on them apparently assumed that the earlier cases have been reversed, though neither in *Erie R. R. Co. v. Tompkins,* supra, nor in any subsequent opinions following that decision has this Court said that *Rowan v. Runnells, Gelpcke v. Dubuque, Douglas v. Pike County* and similar cases *have been overruled or reversed nor has it intimated that they have been overruled or modified.*

The question in this case, therefore, is not whether the Federal Court should apply the law of Florida, but rather it is a question of *what law of Florida it should apply,* the law of Florida of 1924 (the date the contract was entered into between the municipality and holders of its bonds,) or the law announced by the State Court in 1939, after the bonds had come into the hands of bona fide holders; whether the power of state courts to invalidate contracts is unlimited?

The principle announced in *Douglas v. Pike County* was first adopted in England, and has been generally accepted by all American courts. Statutes in existence at the time a contract is made are regarded as in effect a part of a contract, and subsequent amendments are given only pros-

pective operation. The principle has been extended to include judicial decisions, particularly decisions construing a statute; such decisions are to be and have been regarded as a part of the statute and therefore as much a part of contracts entered into in reliance upon them as the statutes themselves. It has been the law of Florida since 1851.

The Supreme Court of Florida in *Heyward and Austin vs. LeBaron,* 4 Fla. 404, held that a contract made in 1839, while Florida was a Territory, should be construed and adjudged by a decision of the Supreme Court of the United States in 1835 when Florida was a Territory, because that decision construed a statute of the Territory, and thereby became a part of the contract. It was the applicable law at the time the contract was made.

In 1869, the Florida Supreme Court decided *Columbia County v. King,* 13 Fla. 451, involving the validity of bonds of a county. That case has been cited more than any other case decided by the Supreme Court of Florida. In its opinion, the Court quoted from *Gelpcke v. Dubuque,* supra, and cited that decision of this Court as authority for refusing to reverse its earlier decision in *Cotton v. Leon County,* 6 Fla. 610, (1856), holding valid the legislative act under which the bonds were issued. It said that for it to hold such bonds void after the bonds had been issued, and after they had passed into the hands of third parties "sanctioned by the judicial department and the acquiescence of the people" would be "an outrage upon public justice, public credit and the rights of the holders for value of these bonds".

That decision has been repeatedly referred to and cited by the Florida Supreme Court as authority for holding that the law in force at the time a contract is made is as much a part of the contract as if it had been incorporated therein.

State v. Tampa Water Works Co.
56 Fla. 858, 47 So. 358
McCaskill v. Union Naval Stores
59 Fla. 571, 52 So. 961
Cary and Co. v. Hyer, 91 Fla. 322, 107 So. 684
Humphreys v. State,
108 Fla. 92, 145 So. 858
State v. Raulerson,
129 Fla. 346, 176 So. 270
City of Bradenton v. Fusillo,
134 Fla. 759, 184 So., 234
Bedell v. Lassiter,
143 Fla., 43, 196 So. 699

In *State ex rel Nuveen v. Greer*, 88 Fla., 249, 102 So. 739, Justice Whitfield on rehearing said that

> "rights acquired under a statute while it was judicially held to be valid, were legally acquired, as the law was then authoritatively interpreted, and such rights may be protected by the organic provision securing *the inalienable right of acquiring, possessing, and protecting property, which accords with the plainest principles of justice*".

(The italicized language is taken from Sec. 1 of the Declaration of Rights in the Constitution of Florida).

As recently as 1936, Justice Davis in *Lee v. Bond Howell Lumber Co.*, 123 Fla. 202, 166 So. 733, cited the *Gelpcke* case and said:

"respectable courts in the United States have uniformly held that *** if a practical situation has come about during which it appears that the statute was declared void or a particular construction of it adopted at one time, and afterwards *** the courts have at a later date reconsidered and adjudged such statute to be valid or construed it differently, that intervening transactions should be governed, and pre-existing rights involved therein protected, according to the rule of the first judicial decisions rendered, so long as that judicial decision was allowed to stand and be understood and acted on by the people as the applicable law of the land for the time being *** this rule has been adopted because the injustice and oppression of any other rule would be so great as to be judicially intolerable."

The case did not involve municipal bonds, but the validity of a tax upon chain stores, collection of which had been enjoined for a period of months pending a final decision by the courts.

There are no Florida cases that hold to the contrary. The Supreme Courts of New York, Illinois, Tennessee, Louisiana, Indiana, Ohio, Mississippi, North Carolina and Alabama hold to the same effect. See particularly *Hill v. Atlantic & N. C. R. R. Co.*, a North Carolina case, 55 S. E. 854.

Falconer v. Simmons,
41 S. E. 193, 51 W. Va. 172;
State v. Cowan,
35 Atl. 354, 83 Md. 549;
Vermont & C. R. Co. v. Vermont Cent. R. Co.,
21 Atl. 262, 63 Vt. 1;

State v. O'Neil,
126 N. W. 454, 147 Iowa 513

Ray v. Western Penn. Natural Gas Co.,
20 Atl. 1065, 138 Pa. St. 576

Farrior v. New England Mortgage Security Co.,
9 So. 532, 92 Ala. 176

Wisconsin Lumber Co. v. State,
54 So. 247, 67 Miss. 571

Harris v. Jex,
55 N. Y. 421, 14 Am. Rep. 285

State v. Mayor, etc. of City of Bristol (Tenn.),
70 S. W. 1031

Mountain Grove Bank v. Douglas County (Mo.),
47 SW. 944

Levy v. Nitsche (La.),
4 So. 472

Town of Hardinsburg v. Cravens (Ind.),
47 NE. 152

City of Cincinnati v. Taft, (Ohio),
58 NE. 63

The fact that State Courts have adopted this principle, and have cited the decisions of this Court as authority for so doing indicates the influence which this rule has had upon American jurisprudence. The moral duty, and the sense of justice, which underlie the principle that property rights acquired in reliance upon existing and recognized rules of law, whether found in statutes or in decisions of courts, should be protected, and the fact that Federal Courts have heretofore refused to give to decisions of State Courts a

retroactive effect that would destroy contract or property rights of non-residents, have stabilized commerce by creating a feeling of confidence among investors in every state in the Union that has resulted in a nationwide market for securities issued by corporations and political subdivisions of other states.

Section 2, Article III of the Constitution of the United States gives Federal Courts jurisdiction "over controversies between citizens of two or more states". Holders of obligations have heretofore, in the cases referred to, been able to enforce their contract rights in Federal Courts, even though State Courts have at times, by a change of judicial decision, voided similar contracts held by local residents, and State Courts because of these decisions have generally refused to render decisions that would bring about a different result in cases in their jurisdiction.

But Petitioners' position is even stronger because the decree adjudicating Petitioners' bonds legal was rendered in 1924 under Chapter 6868, Laws of Florida, 1915 (Appendix A), which was enacted for the *very purpose* of providing a procedure in a court of general jurisdiction by which *validity of their bonds could be determined in advance of sale.* That Act was intended to eliminate the contingency that bonds might be sold in good faith on the supposition that they were legal, and later be held illegal when the parties could not be placed in statu quo. The Supreme Court of Florida has repeatedly and consistently held that decrees rendered under this statute are conclusive of the legality of bonds. Statements to that effect have been made by the Florida Supreme Court in various forms.

In *Thompson v. Frostproof*, 89 Fla. 92, 103 So. 118, the first case under the statute, it held that a decree of validation "rendered further inquiry into the bonds unavailing". In *Little River Bank v. Johnson*, 105 Fla. 212, 141 So. 141, it held that the only defense that could be made against bonds after validation is "the defense of payment or valid discharge"; in *Sparks v. Ewing*, 120 Fla. 520, 163 So. 112, that a validation decree is res judicata and will not be affected even though the Court should later place a different construction upon the statute under which the bonds are issued; in *B. P. I. of Dade County v. State*, 121 Fla. 703, 164 So. 697, and *Rogers v. Walthall*, 125 Fla. 423, 170 So. 115, that the existence of a lawful indebtedness was "conclusively adjudicated and put in perpetual repose". These decisions merely give effect to the language of Chapter 6868, Section 4, which is plain, explicit and unambiguous:- the decree "shall be forever conclusive against the municipality and its taxpayers", and the bonds "can never be brought into question in any court of this State". The only exception to the broad language of the statute is where there is a lack of constitutional authority. Since the Legislature has no power to validate bonds issued in violation of the provisions of the State Constitution, it has no power to authorize a court to do so. But even cases recognizing this exception held that

> "any matter or anything affecting the power or authority to issue the bonds, as well as the regularity and legality, including questions of law and fact which the Legislature could validate by statute, would be put in repose by a validation decree";

and that

> "even constitutional rights or privileges designed solely for the protection of property rights of individuals, and which they may waive, or with reference to which they may estop themselves are also put at rest".

So general had been the acceptance of this construction of the statute by the Florida Courts that the Fifth Circuit Court of Appeals itself in *Green v. Uniacke*, 46 Fed. (2d) 916 held that a decree under the Florida Validation Statute

> "put in repose anything affecting the authority of their maker to issue them, or the regularity or legality of the issue, having the effect of making the question of the validity of the bonds res judicata, and preventing further litigation as to this question".

In *U. S. v. Heyward*, 98 Fed. (2d) 433, it cited the *Green* case, and held that a decree

> "estops the Town, its taxpayers and citizens *from ever attacking their validity* (the bonds)".

Chapter 6868, Laws of 1915, is not peculiar to Florida. It was copied from a statute of Georgia. (Weinberger v. B. P. I. 93 Fla. 470, 112 So. 253). The Supreme Court of Georgia holds that a decree of validation is conclusive and res judicata of the validity of bonds. *Holton v. Camilla*, 68 S. E. 472. The Supreme Court of Mississippi also holds that a decree under a statute of that state (which is almost identical with the Florida Act) is res judicata of validity. *Love v. Yazoo City*, 138 So. 600, 91 Miss. 535. This Court in *Fidelity National Bank v. Swope*, 274 U. S. 123, 71 L. ed.

959, held that a validation decree under a Kansas statute was res judicata, and that decision has been freely quoted and often cited by State Courts. It said that the fact that the municipality was plaintiff, and that the decree was in favor of the municipality, did not prevent the decree from being equally as binding upon the municipality as a decree rendered against it.

It is worthy of note that no attack has been made upon the decree validating Petitioners' bonds; that decree stands unchallenged; no charges of corruption, over-reaching or of other wrong-doing have been made against either the officials of the Town or against purchasers of the bonds. The record shows that the Town intended to issue valid bonds, and thought that it had done so; that the taxpayers thought so. For years payments were made in accordance with the contracts. The factual background of this case closely resembles that of *Columbia County v. King*, 13 Fla. 451, where the Florida Court refused to reverse its former opinion and use its power to hold the bonds void in order to relieve taxpayers of a burden that had been unwisely created by their officials.

Moreover, since the decision of the Circuit Court of Appeals in this case, on June 2, 1941, the Supreme Court of Florida has decided the case of *State v. City of Venice*, 2 So. (2d) 365. In that case the validity of the bonds was challenged because *no election* had been held as required by the City Charter. The Court said "the question of the validity of these bonds in this regard was forever set at rest" by the validation decree, citing *Sparks v. Ewing*, 120

Fla. 520, 163 So. 112. The quoted statement is the Court's answer to one of the questions presented for decision.

In *Sparks v. Ewing*, supra, the bonds were attacked because they had been issued without the approval of the taxpayers at an election as required by the Charter. The courts said that the validity of the bonds

> "was not now an open one as to bonds that have been validated by a judicial decree which is res judicata; no appeal having been taken therefrom".

The Supreme Court of the State of Mississippi, in *Love v. Yazoo City*, supra, held that a decree of validation under the statute of that state was res judicata where no appeal had been taken. The only distinction between the *Venice* case and this case is that in the *Venice* case no election was held. In this case an election was held. According to the Court's construction of the *Belleair* charter there were no qualified voters.

Chapter 6868, Laws of 1915, does not require an appeal to the Supreme Court as a condition precedent to the decree being res judicata of the validity of the bonds. Jurisdiction of the validation proceeding is vested by the statute in the Circuit Court, and its decree is declared to be forever conclusive.

Hence under the recent decision of this Court, in *Vandenbark v. Owens-Illinois Glass Co.*, decided January 6, 1941, advance opinions L. ed. Vol. 85, p. 317, the decision of the Circuit Court of Appeals should be reversed since the decision in *Olds v. Alvord* is no longer the law of the State of Florida.

Since *Olds v. Alvord*, supra, therefore, is the only case where a Florida Court has held that the failure of the Town to comply with the Charter or other statutory requirements was not put in repose by a validation decree, that decision is not now and never was "the law of Florida". It does not represent a rule of law and should not have been considered as binding on the Federal Courts in actions brought under the jurisdiction given them by the Federal Constitution. Petitioners' rights rest on the broad principle of justice and public morals that require the decision of this case to be controlled by the law of the state at the time the bonds were issued, because, as the Florida Court has said, such a rule is necessary to avoid "an outrage on justice", and "the injustice and oppression of any other rule would be so great as to be judicially intolerable". Either under this broad principle of justice, or under the more technical one requiring the Federal Court to follow a decision of the State Court made sub judice announced in the *Vandenbark* case, supra, the decision of the Circuit Court of Appeals must be reversed.

II.

The decision of the Fifth Circuit Court of Appeals holding that the decision of the Florida Court in *Olds v. Alvord*, supra, is conclusive of the invalidity of the Plaintiffs' bonds and that the Federal Courts by reason of the decision of the State Court, made fifteen years after the bonds had been decreed valid, are bound to hold Petitioners' bonds void because the Florida Court held the bonds of other

holders void, deprives Plaintiffs of property without due process of law, in violation of Section 1 of the 14th Amendment to the Constitution of the United States.

Petitioners' rights rest upon the contract in the bonds which a Florida Court of general jurisdiction held to be valid before Petitioners purchased. That judgment has never been set aside or reversed; it was rendered under the authority of a valid statute of Florida which gave the Circuit Court jurisdiction of the cause and declared that its judgment would be forever conclusive of the validity of the bonds. The statute was passed for the purpose of enabling the Town to secure a final determination of validity before bonds were issued. Petitioners purchased in reliance upon the statute and decree,- the law of Florida at the time the bonds were issued. The final decree of validation made in accordance with the statute, Petitioners' privity of contract with the Town, and the consideration received by the Town, vested Petitioners with property or contract rights of which they can not be deprived by a decision of a Florida Court rendered, fifteen years after the bonds had been issued, in a case to which Petitioners were not party. It is of the very essence of due process of law that a final judgment cannot be annulled or set aside except by an action brought for that purpose, and that all parties having a vested interest in that judgment shall be made parties and be accorded their day in court upon the issue tendered. The Bill of Complaint in *Olds v. Alvord,* supra, did not seek to set aside or annul the decree of validation. Petitioners were residents of states other than Florida. As this Court held in *Ayres v. Carver,* 17 How. 591, 15 L. ed. 179, if they stayed out of the suit in the State Court their rights would not

be affected. Petitioners did stay out of that suit. To hold a decree of the State Court, made under such circumstances, conclusive and binding upon Federal Courts in this case is to deny Petitioners their constitutional right of access to the courts of the United States; to nullify the power of a Federal Court to *decide a case* in this forum brought under the authority of Section 2, Article III of the Constitution of the United States; it will, as Justice Taney said in *Rowan v. Runnells*, supra, render that section of the Constitution "utterly useless and nugatory"; it will deny them that due process of law which is guaranteed by the Constitution itself. The action of the lower court in this case is not a decision; it is merely a declaration that Petitioners' case had been decided by the State Court before Petitioners' suit was tried; that the Federal Court was precluded from deciding the case. The Constitutional grant of power to Federal Courts to adjudicate controversies between citizens of different states, was intended to impose upon Federal Courts the duty of deciding those cases according to law, and that duty cannot be performed by automatically registering the will of a State Court. The decision of the State Court in *Olds v. Alvord* deprived the bondholders, party to that case, of property rights that had been adjudged by a Florida Court to have become vested, and was contrary to the express provisions of Chapter 6868, Laws of Florida, which made the decree of validation conclusive. This Court, sitting as the supreme court of judicature for the nation, is not bound by a decision of a Florida Court rendered under those circumstances to deprive these Petitioners of their right merely because the Florida Court deprived other holders of their rights. Section 10, Article I of the Constitution was

intended to provide protection for non-resident property owners and contract holders against loss of rights or property by state action. True, it is limited to prohibiting impairment of the obligation of a contract by passing a law; equally true is it that this Court in the past has held that a violation of this section does not occur as the result of a change of decision by a State Court after contract rights have become fixed. But those decisions were rendered prior to the decision of this Court in *Erie R. R. Co. v. Tompkins*, and during a time when the phrase "laws of a state", as used in the Rules of Decision Act of 1789, was construed as including only "statutes" of a state. That decision held that "laws of a state" include the decisions of state courts. This must mean decisions that were in effect at the time the contract was made. Due process requires a rule of law. It does not mean a mere decision. For law must be a rule applicable to all alike. If *Erie R. R. Co. v. Tompkins* be given the effect given to it by the Fifth Circuit Court of Appeals, State Courts are free to destroy the rights of non-residents by deciding cases to which they are not parties, and compel all Federal Courts, including this Court to do the same, even if those decisions impair the obligation of contracts, or deprive non-residents of their property rights. The importance of granting judicial protection to contracts valid when made is so great that this Court must hold that where a State Court holds otherwise, Federal Courts will nevertheless determine the rights of parties according to law. Otherwise Petitioners will not have been accorded due process. They will not have had a right to have their case tried according to the law of the land.

The statement of Justice Davis which we have quoted, the comment of the Florida Court in *Columbia County v. King*, supra, and the statement of Justice Whitfield in *State ex rel Nuveen v. Greer*, 88 Fla. 249, 102 So. 739, as well as the decisions of this and other Courts, hold that justice and equity forbid the destruction by judicial decision of contracts, valid when made. Such action would violate long accepted principles of simple justice and morals, and undermine confidence in the fairness of courts and the enforceability of contracts made in good faith.

GILES J. PATTERSON,

Attorney for Petitioners.